Louisiana Law Review

Volume 53 | Number 3
Review of Recent Developments: 1991-1992
January 1993

Workers' Compensation

H. Alston Johnson

Workers' Compensation

*H. Alston Johnson**

I. Legislative Developments

The 1992 Regular Session of the Louisiana Legislature did not live up to the prediction made in last year's symposium that a new gubernatorial term and a new legislature might produce substantial new proposals in the workers' compensation field. To the contrary, it was a calm session. There were only two notable changes in substantive law.

A. Time Limit for Death Benefits

Louisiana Revised Statutes 23:1231, which provides for death benefits for work-related injuries, has always contained a time limitation within which the death had to occur in order for it to be compensable. When the Workers' Compensation Act ("Act") was first passed in 1914, this section provided that death benefits were payable for a death that occurred within one year of the work-related injuries. This interesting restriction, not found in the provisions which govern wrongful death in the field of tort,[1] was probably intended to minimize arguments about the causal relationship between the work injury and the demise of the worker. In theory, at least, the shorter the time period between injury and death, the more certain the causal relationship between the two. A number of years later, the time period had been increased from one year to two years.[2] During the 1992 Regular Session, the period was changed to "two years after the last treatment resulting from the accident," a period of time which may be significantly longer than the previous statutory period.[3] Still, with the increased sophistication of medical technology, it does not appear that this increase in time should unduly hinder correct analysis of the cause of death.

---

* Member, Louisiana State Bar Association; Adjunct Professor of Law, Louisiana State University.

1. *See* La. Civ. Code art. 2315 and its predecessors, which appear never to have contained any restriction that in order to be actionable the death had to occur within a given time following the injury. The only restriction was that the beneficiaries had to institute their suit within one year of the death, which is a different consideration altogether.
2. 1956 La. Acts No. 412, amending La. R.S. 23:1231.
3. 1992 La. Acts No. 431, amending La. R.S. 23:1231(A).

B. Penalties for Deferred or Denied Payments

The other substantive change involved penalties for deferred or denied payment of compensation benefits. For the last several years, Louisiana Revised Statutes 23:1201(E) has provided that with respect to any "installment" of compensation which is payable without an order and which is not timely paid, a twelve percent penalty was to be applied to the installment unless the non-payment resulted from conditions over which the payor had no control or unless the amount due had been "reasonably controverted" by the payor. With respect to compensation payable under a final judgment, Louisiana Revised Statutes 23:1201(F) provided that if it were not paid within thirty days of becoming due, a penalty of twenty-four percent was applicable. Amendments during the 1992 Regular Session changed this scheme as follows:

> (1) the penalties are made applicable to "any compensation or medical benefits";
> (2) as to benefits payable without an order, the penalty is to be 12% or $50 per day for each day in which "any and all" benefits remain unpaid, whichever is greater, but subject to an aggregate amount of daily penalty of $2,000; and
> (3) as to benefits payable under a final judgment, the penalty is to be 24% or $100 per day for each day in which the judgment amount remains unpaid after thirty days, whichever is greater, but subject to an aggregate amount of daily penalty of $3,000.[4]

The remaining enactments of the 1992 Regular Session are all procedural in nature and not of particular importance. There were certain changes in the procedure to be followed by the Office of Workers' Compensation Administration ("OWCA") and its hearing officers.[5] There

---

4. 1992 La. Acts No. 1003, amending La. R.S. 23:1201(E) and (F).

5. 1992 La. Acts No. 760 amends La. R.S. 23:1310.3(B), (C), and (D) to introduce a mandatory informal conference before a dispute resolution officer at the outset of the filed dispute. 1992 La. Acts No. 761 amends La. R.S. 23:1316.1(C) to clarify that evidence to support a confirmation of a default judgment before a hearing officer may consist of sworn affidavits. 1992 La. Acts No. 762 changes the provisions of La. R.S. 23:1310.7 relative to enforcement of the orders of the hearing officer by the district court and to findings of contempt for failure to comply so that the district court first issues an order to the recalcitrant individual to appear before the hearing officer and comply, and then may hold the individual in contempt for failure to comply with that order. 1992 La. Acts No. 763 strengthens the power of the OWCA with regard to fraud investigations, by amending and re-enacting La. R.S. 23:1208, 1291(C)(5) and enacting La. R.S. 23:1295-1297. 1992 La. Acts No. 766, amending La. R.S. 23:1293(A)(3) and (B)(4), clarifies the confidentiality provisions governing OWCA records to permit revelation of these records to appropriate authorities investigating tax fraud and to specify that when a claim is set for pretrial conference before a hearing officer, most documents become public record. Finally, 1992 La. Acts No. 861, amending and re-enacting La. R.S. 23:1310.6, authorizes

were others involving the Louisiana Workers' Compensation Corporation,[6] and still others concerning the Second Injury Fund.[7] The only procedural change which merits mention in the text is a clarification that both the employee or his dependent on the one hand, and the employer or the compensation carrier on the other, have the right to initiate proceedings with the OWCA to settle a dispute by filing a claim with the state office or in the district office where the hearing will be held.[8]

II. JURISPRUDENCE

A. Arising Out Of And In Course of Employment

The decision this term in *Mundy v. Department of Health and Human Resources*[9] is disturbing. The supreme court, without dissent, reversed the appellate court and held that tort immunity should not be available to an employer whose employee was stabbed by an unknown assailant on the work premises two minutes after the time that she was scheduled to report for work. The court concluded that the showing of "arising out of" was relatively weak because the risk of assault at the hands of an unknown assailant was a neutral one, not related to the employment. And the court further concluded that the showing of "in the course of" was similarly weak because the employee was not actually at her "work station" but was elsewhere on the premises; she was attacked before the time when she would have been considered late for work; and she had not yet begun her employment duties.

The court's analytical use of the dual requirement and emphasis on the interdependence of the requirement is heartening and in keeping with most recent decisions on the subject.[10] But its determination that

---

the director of the OWCA to appoint a chief administrative hearing officer to whom he may delegate certain of his administrative duties and to appoint "ad hoc judges" to serve as administrative hearing officers.

6. 1992 La. Acts No. 374, amending a number of provisions concerning the Louisiana Worker's Compensation Corporation beginning with La. R.S. 23:1392.

7. 1992 La. Acts No. 767, amending La. R.S. 23:1378(A)(7), requires an insurer seeking reimbursement from the Second Injury Fund to certify that it has reduced its reserves to the amounts that it will be obligated to pay if the Board agrees to reimburse sums above that amount. 1992 La. Acts No. 862, amending La. R.S. 23:1377(B)(1), increases the assessment on insurers to maintain the Second Injury Fund from 2 percent of gross premiums to 2.75 percent.

8. 1992 La. Acts No. 1105, amending La. R.S. 23:1310(A).

9. 593 So. 2d 346 (La. 1992).

10. Raybol v. Louisiana State Univ., 520 So. 2d 724 (La. 1988); Robinson v. F. Strauss & Son, Inc., 481 So. 2d 592 (La. 1986); Palermo v. Reliance Ins. Co., 501 So. 2d 333 (La. App. 3d Cir.), *writ denied*, 503 So. 2d 19 (1987). *See generally* 1 Wex S. Malone and H. Alston Johnson, *Workers' Compensation Law and Practice* § 149, in 13 Louisiana Civil Law Treatise (2d ed. 1980).

the "in the course of" showing was weak is inconsistent with numerous other decisions over the years which have properly interpreted this concept broadly with respect to time and place. Even the supreme court's own opinion concedes that the employee was "expected to report to work at 11:15 p.m." and that she would have been considered "late at 11:20 p.m." even though the preceding shift did not actually end until 11:30 p.m.[11] She was reported to have arrived at "approximately 11:17 p.m." though the opinion does not reveal how that determination was made, and the incident reportedly occurred a few minutes later. On this crucial point of time, the opinion can only offer that while her reporting time had already passed, the incident occurred "before the time for late arrival."[12]

As to the place, there seemed to be no dispute that the incident occurred in one of three possible banks of elevators that the employee could have taken to her work station on the eleventh floor.[13] The court noted that since the incident occurred between the first and second floors, she was not "under the supervision and control of her employer" and was in an area open to the public, patients and other visitors.[14] This led the court to a subdivision of the premises into her "work station" and other locations on the work premises which is apparently without precedent.

The plaintiff's injuries were apparently serious, and the manner in which they occurred is deplorable. In the context of a tort claim, perhaps it is not surprising that immunity would be denied. But the precedent set in *Mundy* may prove to be a difficult one to deal with in a future case in which the issue is simply compensation versus no compensation and our courts find that they have viewed the "in the course of requirement" much too narrowly.

B. Mental Stress

The maturing of the supreme court's decisions in *Sparks v. Tulane Medical Center Hospital & Clinic*[15] and *Williams v. Regional Transit*

---

11. *Mundy*, 593 So. 2d at 348. The time at which the preceding shift ended should not have any particular relevance, because it seems clear that the next shift was required to report at a given hour and was considered late five minutes thereafter.

12. *Id.* Surely this statement should not be taken to mean that being squarely within the course of employment requires that the time for late arrival should have passed, and that if one is on time and before the time for late arrival, one is not squarely within the course of employment.

13. The court also suggested that she could have taken the stairs to the eleventh floor, presumably to imply that since there were alternative routes to her work station, she should not be considered on the work premises whichever route she took.

14. It is unclear why her presence on the work premises in an area which might also be open to others is of any great significance.

15. 546 So. 2d 138 (La. 1989). *See generally* Malone & Johnson, supra note 10, § 235, at 92-96 (2d ed. 1980 & Supp. 1992).

Authority[16] relative to mental stress resulting in mental disability continues. During this term, appellate courts rejected attempts to extend the rationale of those cases to incidents in which the mental stress factors were chronic rather than acute and in some instances were not employment-related at all. In *Preston v. Young Men's Christian Ass'n*,[17] the claimant was the aquatics director at the YMCA who had become totally disabled due to a severe mental condition. The evidence showed that over a four-year period, there had been two drownings and a heart attack on the premises, and that she felt personally responsible for these events. However, there were also some staff departures after the most recent drowning, and the claimant had a long history of mental problems outside the employment and had even attempted suicide. The court concluded that the last drowning which plaintiff had invoked to prove an identifiable, work-related event was not the cause of her disability and rejected her claim for compensation.

Similarly, in *Smith v. Mercy Hospital*,[18] the claimant cited *Sparks* and *Williams* but to no avail. Once again, there was a series of very minor work incidents which the court found to be rather ordinary in the workplace. In the court's words, they were "general conditions of employment and are not unusual, or dramatic."[19] These generally stressful conditions did not satisfy the requirement of personal injury by accident, and the plaintiff's claim was denied.

The facts in *Ward v. Commercial Union Insurance Company*[20] presented a different picture and thus a different result. The employee was a former military man who had consistently excelled in highly stressful, technical, skilled jobs. Until the day in question, he had apparently performed very stressful and tedious work without incident. However, on a given day, in the last of a series of service calls on medical equipment in three different cities, he was surprised by a tap on the shoulder. Startled, he inexplicably jumped forward into the machine, cutting his hand and arm and urinating on himself. When he completed his work shortly thereafter, he telephoned his employer and told him he was unable to work any more. On arrival at his home, he appeared distraught and spoke with a stutter which had never been present before.

There was no dispute about his continuing disability after this incident; the only question was whether he had sufficiently established an "accident." Both the trial court and the court of appeal thought that he had, which is not surprising in light of the identifiable incident that

16. 546 So. 2d 150 (La. 1989).
17. 595 So. 2d 1181 (La. App. 5th Cir. 1992).
18. 597 So. 2d 114 (La. App. 4th Cir. 1992).
19. *Smith*, 597 So. 2d at 118.
20. 591 So. 2d 1286 (La. App. 3d Cir. 1991).

he proved. In keeping with *Sparks*, he demonstrated a "single, unforeseen and catastrophic event" which gave rise to his condition.

C. *Second Injury Fund*

There were a few decisions during this term that shed some light on the portions of the Act that deal with the Second Injury Fund. This little-known portion of the Act exists to encourage employers to hire handicapped workers by assuring that if they do so with knowledge of the handicap, and if the handicap merges with a subsequent workplace injury to cause a greater disability than would have occurred with an able-bodied worker, the Second Injury Fund will reimburse the employer for most of the compensation due for that greater disability. While most of the provisions need little additional interpretation, there are occasionally instances in which some clarification is offered by the cases.

During this term, it was held by two different panels of the third circuit that the requisite knowledge of a pre-existing disability which an employer must have when he hires a worker in order to qualify for reimbursement from the Fund may be imputed to a principal under Louisiana Revised Statutes 23:1061 (statutory employer) who seeks reimbursement from the Fund.[21] The courts in each instance reasoned that it would be unfair to require a principal to be liable for compensation payments but not to give it the same rights that a direct employer would have for reimbursement under proper circumstances. That seems correct, but if the primary purpose of the Second Injury Fund is to encourage the hiring of handicapped workers,[22] and principals by definition do not hire such workers, the reason for equating their treatment with direct employers disappears—unless one assumes that statutory employers might, in the face of a contrary result, discourage direct employers from hiring the handicapped.

In *U.S. Fire Insurance Company v. State Worker's Compensation Second Injury Board*,[23] the court faced a case of first impression. The injured worker was self-employed as the sole proprietor of a one-person trucking business. He had purchased compensation insurance, and he had a pre-existing partial disability, of which he was obviously aware. The insurer who had paid benefits sought reimbursement from the Board, but the Board denied the claim. The trial court affirmed, on the ground that the purposes of the Act were not furthered by permitting the insurer

---

21. Brady v. State Worker's Compensation Second Injury Bd., 594 So. 2d 1045 (La. App. 3d Cir.), *writ denied*, 596 So. 2d 557 (1992); Willamette Indus. v. State Worker's Compensation Second Injury Bd., 595 So. 2d 1206 (La. App. 3d. Cir.), *writ denied*, 600 So. 2d 608 (1992).

22. *See* La. R.S. 23:1371(A) (1985).

23. 590 So. 2d 1310 (La. App. 1st Cir. 1991).

of self-employed workers to be reimbursed for benefits it paid. The appellate court reversed, however, noting that it perceived no valid reason to exclude the insurers of self-employed workers from these benefits. Since the trial court had not reached the issue of merger and thus had not ruled on the merits of the claim for reimbursement, the case was remanded to the trial court for a determination of that issue. There were two other decisions involving the Second Injury Fund which are relegated to the margin.[24]

D. Immunity of the Principal

The appellate courts have continued to hold during this term, and properly so, that the amendments to Louisiana Revised Statutes 23:1061 aimed at overruling the supreme court's decision in *Berry v. Holston Well Service, Inc.*[25] are substantive and therefore can only be applied in a prospective manner.[26] The supreme court has yet to speak on that issue or on the merits of a dispute governed by those amendments.

E. Sharing of Attorney's Fees by Intervenor; More Moody

The maturing of *Moody v. Arabie*[27] also continues. As the faithful reader of this forum knows, the supreme court required several years ago that an intervening compensation carrier or employer might have to share the attorney's fees of the injured employee who brings a tort

---

24. Zurich-American Ins. Co. v. State Worker's Compensation Second Injury Bd., 600 So. 2d 883 (La. App. 1st Cir. 1992) (insurer paid compensation and filed a claim with the Board for reimbursement, which was denied; employer was apparently not a party to the claim, since it had not paid compensation and was not entitled to reimbursement; insurer received notice of denial, but employer did not; insurer filed suit with district court for review more than the allowed thirty days after denial; arguments against the prescription plea were unavailing, even though employer claimed it had not had notice of denial; since employer was not a party, it had no right to notice); Huval Baking Co. v. State Worker's Compensation Second Injury Fund Bd., 594 So. 2d 1028 (La. App. 3d Cir. 1992) (board denial reversed by trial court, but reversed and remanded by appellate court for a variety of errors including use of erroneous formula by trial court to determine reimbursement amount).

25. 488 So. 2d 934 (La. 1986).

26. Young v. Lyons Petroleum, Inc., 598 So. 2d 702 (La. App. 3d Cir. 1992) (also rejects a two-contract immunity argument on the facts there presented and reverses a summary judgment which had been granted to the defendant on the ground that there was a genuine issue of material fact as to the trade, business or occupation immunity argument which had been made); Bowens v. General Motors Corp., 596 So. 2d 243 (La. App. 3d Cir.), *writ granted*, 600 So. 2d 593, 594 (1992) (also holds that under pre-amendment law, the trial court erred in concluding that immunity should not be granted to the principal); Bourgeois v. Puerto Rican Marine Management, Inc., 589 So. 2d 1226 (La. App. 4th Cir. 1991), *writ denied*, 592 So. 2d 1299, 1300 (1992) (also contains some interesting discussion of proper jury instructions on the statutory employer defense).

27. 498 So. 2d 1081 (La. 1986).

suit according to a formula that would allocate a reasonable attorney's fee for "plaintiff's side" of the case according to a formula based on the proportions of the recovery divided between the intervenor and the plaintiff. In theory, the concept was as simple and powerful as it was unpopular in some quarters. In practice, it has proven to be a little difficult for some courts to apply—perhaps because they were not particularly fond of the concept from the outset.

In any event, during this term, there are some additional clarifications. In *Taylor v. Production Services, Inc.*,[28] the supreme court notes that in most cases the appropriate method of determining the proper allocation of a reasonable attorney's fee is to take the total recovery from the tortfeasor for both the injured employee and the intervenor; determine a reasonable attorney's fee for the recovery of that total sum; and then allocate the attorney's fee between the intervenor and the injured employee according to the percentage of the total recovery assignable to each. In the event that the intervenor has proven that it should be entitled to a credit for amounts paid to its own counsel which augmented the total recovery, that credit should be applied against the amount which it would otherwise pay for the services of counsel to the injured employee.

And in *Thompson v. Gray & Co.*,[29] the first circuit reached the predictable conclusion that *Moody* applies with equal vigor to settlements which are reached without the filing of a suit, at least in the factual context in which it is clear that the compensation carrier knows of the existence of the employee's claim and his possible recovery.

F. Intentional Torts

With one very notable exception, the cases during this term continue to deal with the intentional-tort exception in a proper manner. In the majority of cases, the allegations presented by the employee in an attempt to recover for an intentional tort are insufficient, amounting to no more than negligence of varying degrees or in any event conduct short of intentional in nature.[30] In an occasional case, the allegations were held

---

28. 600 So. 2d 63 (La. 1992).

29. 590 So. 2d 1318 (La. App. 1st Cir. 1991).

30. Pickney v. Smith, 597 So. 2d 1195 (La. App. 3d Cir. 1992) (affirming jury verdict finding that employer did not know consequences of its behavior to a substantial certainty; interestingly, both the trial court and the appellate court held that an exception of no cause of action could not be sustained on the allegations, but rather the matter had to proceed to trial); Holden v. Holliday, 597 So. 2d 1176 (La. App. 1st Cir. 1992) (reversing award of tort damages to employee of state run school for mentally handicapped who was kicked by resident of school whose medication had been reduced by physician hired by the school to check periodically on patients); Knight v. Cracker Barrel Stores,

to be sufficient to withstand a peremptory exception of no cause of action.[31]

One erroneous decision stands out, however. In *Gagnard v. Baldridge*,[32] the worker had been struck by her supervisor. There is no doubt whatsoever that this is the kind of case which should support a tort recovery under the intentional-act exclusion in Louisiana Revised Statutes 23:1032. However, the claimant's petition apparently sought both tort damages and workers' compensation benefits. The latter demand had apparently been submitted to the OWCA and presumably denied. In any event, both claims were tried. A jury awarded tort damages; the trial judge proceeded to award compensation benefits and medical expenses.

Amazingly, the appellate court affirmed that result. Its reasoning is unpersuasive and no real authority is cited. Apparently, it believed that the intentional tort exclusion from the Act was intended as an "extra punishment" for the employer over and above compensation remedies. This is not consistent with either the wording of Section 1032 or the legislative history of the exclusion. The legislature in fact rejected the notion of "double compensation" as a penalty for intentional torts and in fact chose a much more rigorous sanction: removal of the tort immunity. A worker who recovers full tort damages after having received workers' compensation benefits for a portion of those same damages in fact achieves a double recovery, and there is nothing in the Act which suggests that should be the case. A full tort recovery will in all events compensate a worker for both compensable and non-compensable elements of damages, and that should be sufficient. The *Gagnard* decision should be overruled at the earliest possible opportunity.

G. Prescription

There were two important decisions during this term involving prescriptive periods, although in each the cause of action at issue was not a compensation claim. In *Parker v. Southern American Insurance Co.*,[33]

Inc., 597 So. 2d 52 (La. App. 1st Cir.), *writ denied*, 598 So. 2d 377 (1992) (convenience store employee was sexually assaulted by customer; jury awarded tort damages against employer, but trial judge entered judgment in employer's favor notwithstanding the verdict; appellate court affirmed; conduct negligent at most and not intentional); Fannin v. Louisiana Power & Light Co., 594 So. 2d 1119 (La. App. 5th Cir.), *writ denied*, 600 So. 2d 644 (1992) (negligent acts of supervisory employees did not equal intentional tort); Beaudoin v. Hartford Accident & Indemn. Co., 594 So. 2d 1049 (La. App. 3d Cir.), *writ denied*, 598 So. 2d 356 (1992) (supervisor's arguably rude comments to employee did not rise to level of intentional infliction of mental distress).

31. Rose v. XYZ Cable Co., Inc., 600 So. 2d 774 (La. App. 5th Cir. 1992).

32. 597 So. 2d 1269 (La. App. 3d Cir.), *writ granted*, No. 92-C-1415 (September 18, 1992).

33. 590 So. 2d 55 (La. 1991).

the widow of a deputy sheriff who had suffered a fatal stroke brought a tort suit against the sheriff. The suit was brought just a couple of months short of three years after the death. The widow had originally proceeded in a timely fashion against the sheriff for workers' compensation benefits, but became embroiled in the continuing dispute over whether deputy sheriffs are entitled to compensation against the sheriff or against the State of Louisiana, or perhaps are not entitled to compensation at all. The story is too long to relate here, and the reader is referred to another source for the merits of that discussion.[34]

Suffice it to say that there has been considerable confusion, and accompanying movement to and fro, in both the judicial and legislative arena over whether deputy sheriffs are "public employees" (entitled to compensation) or "public officials" (*not* entitled to compensation). The widow's compensation suit was caught up in that confusion, and she was held not entitled to compensation after a three-year struggle in the judicial system.[35] Less than two weeks after that determination was made, the widow instituted her tort suit. Thus although the tort suit was well beyond the ordinary prescriptive period, it was brought only two weeks after she was finally and officially informed that her remedy was in tort rather than in compensation.

Under the circumstances, it is probably not surprising for the supreme court to rule that the tort suit had not prescribed when brought. In doing so, it held that the prior suit in compensation, which was dismissed on an exception of no cause of action, interrupted prescription running on the tort cause of action because the petition notified the defendant "that legal demands are made for a particular occurrence."[36] The court reasoned that since an accident may occur with or without fault, the existence of a compensation remedy only shields an employer from fault-based responsibility. When the shield is removed, the tort liability to which the employer was always potentially exposed and of which he theoretically had knowledge all along then becomes viable. Thus there is no element of surprise, in the court's view.

The court's conclusion, in light of the widow's difficulties in getting her claim heard at all, is predictable. The language of the opinion is rather broad, and may perhaps cause trouble in the future. There was contrary appellate opinion which went without mention and presumably is overruled.[37]

---

34. Malone & Johnson, supra note 10, § 98, at 219-24, and at 35-39 (Supp. 1992).

35. Parker v. Cappel, 500 So. 2d 771 (La. 1987). The trial court had held unconstitutional the statutory scheme in which certain deputy sheriffs were entitled to compensation and some not (the decedent falling in the latter category), but the supreme court reversed.

36. *Parker*, 590 So. 2d at 56.

37. Aleem v. Aabco Contractors, Inc., 422 So. 2d 1293 (La. App. 5th Cir. 1982)

The other decision involved prescription of a claim for statutory damages for retaliatory discharge. In *Maquar v. Transit Management*,[38] the claimant had been discharged from his employment on March 8, 1988 and brought a claim with the OWCA for benefits and penalties on January 25, 1989. In keeping with the procedure then applicable, OWCA issued a non-binding recommendation on March 31, 1989 which was rejected by one of the parties. Within the sixty-day statutory period allowed for filing suit following such a rejection, the claimant filed a claim for compensation *and* retaliatory discharge benefits in district court on March 30, 1989—more than a year after the actual discharge.

Both the trial court and the appellate court held that the claim for retaliatory discharge was prescribed, having been brought more than a year after the discharge.[39] But the supreme court reversed, reasoning in line with the deputy sheriff opinion discussed above that it was possible the claim submitted to OWCA might have included sufficient facts to put the defendant on notice that a retaliatory discharge claim might also have been pleaded. The court remanded for a determination of whether the OWCA claim gave adequate notice of a factual basis for the retaliatory discharge claim. Thus there was no square holding that any OWCA claim would interrupt prescription as to a retaliatory discharge claim;[40] rather, there was a determination that certain claims before OWCA might give the defendant sufficient notice of a retaliatory discharge claim so as to interrupt the prescriptive period running against such a claim.

H. Miscellaneous Matters of a Procedural Nature

During this term, the supreme court correctly resolved two matters of a largely procedural nature. The background of these decisions is the creation in 1983 of the OWCA, which handled the initial filing of disputed claims and issued a non-binding recommendation to resolve the dispute. Either party was free to reject the recommendation and proceed to district court. Act 938 of 1988, originally to be effective January 1, 1989 and later deferred until January 1, 1990, replaced this system with binding decisions by hearing officers, directly appealable to the appropriate appellate court. The state district courts were entirely removed from the process for injuries occurring after that date.

(original petition seeking workers' compensation damages did not sufficiently state cause of action in tort, so that it was held not to interrupt prescription running against later tort demand).

38. 593 So. 2d 365 (La. 1992).

39. See Lynn v. Berg Mechanical, Inc., 582 So. 2d 902 (La. App. 2d Cir. 1991).

40. Such a claim must, under Sampson v. Wendy's Management, Inc., 593 So. 2d 336 (La. 1992), be brought in district court and not before the hearing officers operating under the supervision of the OWCA.

The system of administrative hearing officers immediately came under constitutional attack which clouded the enforceability of the system as its effective date neared. Accordingly, the legislature passed interim legislation[41] delaying the effective date and providing for the eventuality of a declaration of unconstitutionality. Finally, in the 1990 Regular Session, the legislature passed a constitutional amendment to be placed on the ballot in October, 1990 and effective November 7, 1990, retroactively validating the hearing officer procedure in the event it was declared unconstitutional.

In due course, the initial hearing officer system was declared unconstitutional.[42] The decision became final two days before the electorate approved the retroactive constitutional amendment. In *Long v. Insurance Co. of North America*,[43] the claimant's suit spanned the pertinent time periods. She was injured late in 1989 and filed a claim with OWCA in early January, 1990; the claim was referred to a hearing officer for resolution. Later in 1990, she filed suit in district court, and it was that suit which reached the supreme court for a determination of whether the constitutional amendment could validate a procedure which had been held to be unconstitutional as of the time that her suit was first filed.

The supreme court properly interpreted the constitutional amendment as intended to validate the hearing officer system as of January 1, 1990. Accordingly, the hearing officer system was valid as of that date, and the claim which the plaintiff filed with that office in early January, 1990 should be adjudicated there and not in district court. All of this is more confusing than it should be, but once the interim cases are through the judicial pipeline, these problems should disappear.

One additional minor point was clarified in *Ross v. Highlands Insurance Co.*[44] In keeping with the procedure described above, a claimant filed a claim with OWCA for a 1986 injury. He rejected the nonbinding recommendation of OWCA and instituted suit in district court. In due course, a settlement was reached and the district judge signed a consent judgment on April 11, 1989. In late 1990, the defendants allegedly failed to abide by that judgment, and plaintiff filed suit in district court seeking to enforce it. Since the hearing officer system had then come into effect, the defendants claimed that the district court lacked jurisdiction. Specifically, the defendants claimed that the creation of the hearing officer system had divested the district court of any

41. 1989 La. Acts No. 260, deferring the effective date to January 1, 1990; 1989 La. Acts No. 23, providing a "fail-safe" legislative structure that carried forward the 1983 version of the dispute resolution procedure in the event that the new system was declared unconstitutional.

42. Moore v. Roemer, 567 So. 2d 75 (La. 1990).

43. 595 So. 2d 636 (La. 1992).

44. 590 So. 2d 1177 (La. 1991).

jurisdiction over the enforcement of its own judgment. Not surprisingly, the supreme court disagreed. Depriving a court of jurisdiction to enforce its own judgment would be a remarkable step indeed, and nothing in the recent legislative amendments states such an intention. As the supreme court noted, the day will come when the district courts will have been out of the compensation dispute business so long that they will no longer have judgments that require enforcement, but "[t]hat day is not yet here."[45] In the interim, it is proper to permit district courts to enforce their own judgments when it is claimed that one party or the other is not abiding by the judgment. That is the result announced by *Ross*.

---

45. *Id.* at 1182.